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1 Despite the tortured history of this property, the debtor -
2 and only the debtor - opposes the short sale, arguing the
3 property should go through a full marketing which debtor believes
4 would yield "greater than 4 million..." The trustee shows the
5 first is owed \$3,402,099; the second \$456,000; and the third \$1.5
6 million, which is capped by agreement at \$488,000. The total
7 debt on the property for just the three senior lienholders is
8 \$4,346,099, before considering costs of sale and commission,
9 which usually totals approximately 8% of the sales price, absent
10 agreement otherwise. Those expenses have to be subtracted from
11 the gross sales price to determine the net yield. Assume a sales
12 price of \$4.2 million, as Mr. Griffith hypothesizes,
13 approximately \$336,000 in expenses would be incurred, leaving a
14 net yield of approximately \$3,864,000, which is significantly
15 less than the total debt against the property, which is over
16 \$4,346,000.

17 For the foregoing reasons, the debtor lacks standing to
18 challenge the proposed sale in this Chapter 7 case because the
19 estate is insolvent.

20 Independent of the Court's ruling on standing, the Court
21 concludes the trustee's motion should be granted on its merits.

22 According to the declaration of Shannon Vencill of the U.S.
23 Trustee's office, filed in support of the motion to dismiss this
24 case, a Notice of Default was recorded against the subject
25 property on December 21, 2009. Subsequently, a Notice of
26 Trustee's Sale was recorded against the subject property on April

1 22, 2010. On September 27, 2010 debtor filed a petition under
2 Chapter 13, with the assistance of counsel. On October 14,
3 debtor filed his missing schedules. Schedule D showed that
4 debtor had over \$4.1 million in secured debt, making him
5 ineligible for Chapter 13 under 11 U.S.C. § 109 on the face of
6 the petition. The Chapter 13 trustee objected to confirmation of
7 debtor's plan for that reason. Confirmation was denied on
8 December 22, 2010, and the order was entered January 12, 2011.

9 Less than two weeks later, using the same counsel, debtor
10 filed the instant petition under Chapter 11, on January 24.
11 Notwithstanding that debtor had filed schedules in the prior
12 Chapter 13, the instant case was again filed "bare bones."
13 Before the first meeting of creditors was held, the U.S. Trustee
14 moved to dismiss for lack of participation in the Chapter 11
15 process, combined with the problems in the Chapter 13 case. In
16 this case, neither debtor nor counsel appeared for the Initial
17 Debtor Interview, nor did they provide requested documentation.
18 A creditor opposed dismissal and sought conversion to Chapter 7
19 instead. Following a hearing, the Court ordered the case
20 converted, and Mr. Akers was routinely appointed as Chapter 7
21 trustee.

22 Debtor thereafter changed counsel, and Schedules were
23 finally filed on May 18, 2011. A month later, debtor moved to
24 dismiss the Chapter 7 case which, after hearing, was denied for
25 reasons stated on the record. On August 3, 2011 the trustee
26 filed a notice of intent to abandon the subject property, stating

1 that the property was worth \$4,250,000, while the debt on it
2 exceeded \$4,045,000, before expenses of sale, leaving no equity
3 for creditors. Meanwhile, pre-petition debtor rented the
4 property to Steven Marshall in or about 2009. Mr. Marshall is
5 the proposed purchaser.

6 On or about August 30, 2011 the trustee withdrew his notice
7 of intent to abandon, although he had received no opposition.
8 Then, around November 7, 2011 the trustee applied to employ
9 Coldwell Banker to market the property, with a listing price of
10 \$3,800,000 to \$4,000,000. The employment was authorized, nunc
11 pro tunc to October 5, 2011.

12 On July 19, 2012 debtor substituted himself, and his counsel
13 withdrew. The next day the trustee filed an emergency motion to
14 require debtor to vacate the subject property and for
15 authorization for the U.S. Marshal to assist in reestablishing
16 possession. According to trustee's counsel's declaration, he had
17 been advised by the tenant, Mr. Marshall, that debtor had broken
18 into the residence and changed the locks, and had posted a 3-day
19 Notice to Quit. Debtor filed an opposition, with support from
20 Michael T. Pines, who was an attorney undergoing disbarment
21 proceedings. The Court granted the trustee's motion after
22 hearing. Debtor also filed a state court unlawful detainer
23 proceeding against Mr. Marshall in July 2012. The trustee
24 removed the proceeding to this Court.

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1 In the meantime, around June 29, 2012 the Court authorized
2 the trustee to employ a different broker, who specialized in
3 short sales. This motion is the end result of that process. In
4 his declaration opposing the instant motion, debtor states:

5 "In July 2012, I became aware that the Trustee was
6 attempting to sell my property to Mr. Marshall for around
\$3.5 million..."

7 One of the debtor's main complaints is that the trustee did not
8 require Mr. Marshall to pay rent over most of 2012, and some of
9 2011. The trustee responded that any rent paid would be the cash
10 collateral of the lenders, and would not be available to the
11 estate or unsecured creditors unless some separate form of
12 adequate protection was provided. The trustee represents that
13 all those considerations factored into the terms ultimately
14 arrived at, which are embodied in the proposal pending before the
15 Court.

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1 **CONCLUSION**

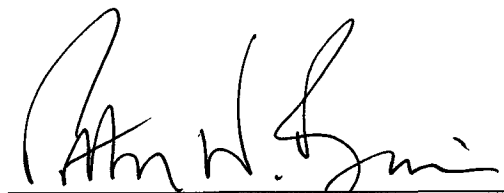
2 For all the foregoing reasons, the Court finds and concludes
3 that the trustee's motion to approve the proposed short sale
4 should be, and hereby is approved. The Court finds that the
5 trustee has exercised sound business judgment and obtained for
6 the estate a benefit made available by agreement of the secured
7 lenders. Further, the Court finds and concludes that debtor
8 lacks standing to object to the proposed sale. In addition,
9 debtor's conduct delaying and interfering with the trustee's
10 possession, custody and control of property of the bankruptcy
11 estate independently supports approval of the sale.

12 The Court also finds and concludes that the record
13 establishes that Mr. Steven Marshall has proceeded in good faith
14 within the meaning of 11 U.S.C. §363(m) and is entitled to the
15 protection thereof.

16 Lastly, the trustee has requested that the Court waive the
17 14 day stay of Rule 6004(h), Fed. R. Bankr. P. For the reasons
18 set out above, the Court finds that waiver is warranted, so no 14
19 day stay thereunder will apply.

20 IT IS SO ORDERED.

21 DATED: JAN 15 2013

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23 

24 PETER W. BOWIE, Chief Judge
25 United States Bankruptcy Court
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